IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9194 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT WOMEN ECONOMIC DEV. CORPN. LTD.

Versus

BHARTIBEN B. SHAH & ORS.

Appearance:

1. Special Civil Application No. 9194 of 1993

MR HS MUNSHAW for Petitioner No. 1

MR DG CHAUHAN for Respondent No. 1-4

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 04/04/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Munshaw for the petitioner and Mr.Chauhan for the respondent workman. By way of this petition, the petitioner has challenged the award made by the labour court,Ahmedabad in Reference

(LCA) No. 1171 of 1989 dated 20th July, 1992 wherein the labour court has granted reinstatement in favour of the respondent with continuity of service with full back wages for the intervening period. Initially, this court has directed the petitioner to deposit 1/2 of the amount awarded by the labour court by way of back wages within two weeks from the date of the order and on such condition, notice was issued by making it returnable on 11th January, 1994 and out of the amount deposited, the respondents were permitted to withdraw Rs.1000.00 towards the cost and office was accordingly directed. Thereafter, this Court has issued rule on 18th August, 1994 and stay against reinstatement was granted on a condition that the petitioner will go on paying current amount to the respondents at which they were paid last.

Learned advocate Mr. Munshaw for the petitioner has submited that in view of the Government Resolution dated 29th March, 1982, the scheme has come into existence on the basis of No Profit No Loss and accordingly, in Apna Bazar, said canteen had started wherein the respondents were appointed by the Corporation. He has submitted that the Central Government has issued letter dated 23.5.1988 wherein the Central Govt. has decided that as far as possible, women's development corporations will not start their own units but encourage the setting up of women's groups/cooperatives which will take up income generating units and whereever units have been started by women's development corporations, the attempt should be made to form a cooperative and to hand over the functioning of the group to it with the ultimate aim of making it self sustaining. According to Mr. Munshaw, in view of the aforesaid letter of the Central Government, it was resolved by the corporation as per page 34 of the petition to authorize the Managing Director to transfer the management of various canteens which are presently run by the corporation in the City of Ahmedabad, to the cooperative societies of the employees (canteen workers) or to voluntary social organizations of repute, upon such terms and conditions that may be laid down by the Managing Director. Mr. Munshaw has submitted that the canteen remained in existence from 1982 to 1988 and from 13.2.1989, the corporation has given option to the respondents workmen with clear intention that now they will close down the canteen and if they have to run the canteen, some financial aid will be provided by the corporation. According to him, the respondent workmen had not given response to this offer made by the petitioner and, therefore, ultimately their services were terminated on 1st May, 1989 and now canteen is not in

existence and it has already been closed and in such a situation, reinstatement is not possible and no reinstatement could therefore be granted. He has submitted that there are various decisions of the apex court to the effect that when the project has been closed or if the activity has been closed wherein daily rated or any other employee has been engaged, then, in such situation, reinstatement cannot be granted by the labour court. On the basis of these submissions, he submitted that the labour court has erred in granting reinstatement with back wages.

On the other hand, learned advocate Mr.Chauhan appearing for the respondents herein has submitted that the documents from page 17 to 37 produced by the petitioner before this Court were not produced by the petitioner before the labour court and the labour court was, therefore, not having opportunity to examine the said documents and in view of these facts, this court cannot take into consideration hose documents since such documents have been produced by the petitioner before this court for the first time. Before the labour court, only written statement Exh. 10 was filed and except that, the petitioner remained absent and various opportunities were given to the petitioner in each occasion but the petitioner remained absent and, therefore, the labour court was justified in passing the award in question and, therefore, now this court should not examine the aforesaid documents produced before this Court for the first time. According to him, in absence of the aforesaid documents, the labour court was right in passing the award in question and has not committed any error in granting the reliefs in favour of the workmen concerned. He has further submitted that the said closure referred by the petitioner for the first time before this Court is contrary to the provisions of section 25-FFA of the Industrial Disputes Act, 1947 since no notice or notice pay in lieu thereof or any retrenchment compensation has been paid by the petitioner to the respondent workman. While terminating their services, the petitioner has also not complied with the mandatory provisions of section 25-F and therefore,this court should not interfere with the award in question.

I have considered the submissions made by the learned advocates for the parties. I have also perused the award in question. Before the labour court, statement of claim was filed by the workmen at Exh. 5 wherein it has been pointed out that their services were terminated with effect from 1st May, 1989 and they were appointed from 1982 and they continued to work for more

than seven years and at the time of terminating their services or retrenching them, the first party corporation has not complied with the provisions of section 25-F of the I.D. Act, 1947. Before the labour court, written statement to the statement of claim was filed by the corporation at Exh. 10 and thereafter, oral evidence of the workman concerned Laxmiben was recorded at Exh.12 and thereafter the matter was adjourned for cross examination of the said witness. On the date of cross examination of the said witness, learned advocate Mr. Shah for the petitioner had remained absent and, therefore, cross examination was adjourned and thereafter one application was submitted by the advocate for the petitioner at Exh. 13 that since his son was not well, he had remained absent and therefore he may be given one date for cross examination of the witness and time was granted and thereafter also, the petitioner had remained absent; advocate for the petitioner also had remained absent and ultimately right of the petitioner to cross examine the oral evidence of the witness for the workmen was closed and thereafter, the evidence given by the witness for the workmen had remained uncontroverted and unchallenged. The labour court has considered the averments of the parties and evidence on record and on that basis the labour court has passed the award in question. Therefore, in my opinion, since there was no rebuttal evidence produced by the petitioner, and since the evidence of the workmen had remained unchallenged and uncontroverted, the labour court was having no option but to believe such evidence and, therefore, the labour court has rightly set aside the order of termination.

During the course of hearing of this petition, learned advocate Mr. Chauhan for the workmen concerned has made statement before this court under the instructions from his clients that the workmen concerned namely Bharatiben B. Shah, Niruben M. Shrimali, Kokilaben G. Patel are not interested in reinstatement as has been granted by the labour court but they are claiming 50 per cent of the back wages which have been deposited by the petitioner and are also claiming for retrenchment compensation for the period for which they have rendered service and if that amount is paid to the said workmen, then, they will not claim for enforcement of their right of reinstatement as per the award in question. As regards the workman Laxmiben M. Parmar, Mr. Chauhan has submitted that she is insisting for reinstatement and she may be given reinstatement with back wages and continuity of service.

I have considered the submissions made by both the

learned advocates. I have also considered the statement made by Mr. Chauhan as aforesaid. Taking into account such statement made by Mr. Chauhan, according to my opinion, the statement is reasonable and the same is required to be considered and accepted and the award made by the labour court concerned is required to be modified in terms of the statement made by Mr.Chauhan under the instructions of his client.

Accordingly, in view of the statement made by Mr. Chauhan under the instructions from the workmen concerned, it is ordered that the workmen concerned namely Bharatiben B. Shah, Niruben M. Shrimali, Kokilaben G. Patel are not entitled for reinstatement as has been granted by the labour court but they are entitled to 50 per cent of the back wages which have been deposited by the petitioner and are also entitled for retrenchment compensation for the period for which they have rendered service and if that amount is paid to the said workmen, then, they will not be eligible to claim for enforcement of their right of reinstatement as per the award in question. Registry of this court is directed to pay 50 per cent of the back wages in respect of the aforesaid three workmen as has been deposited by the petitioner before this court by account payee cheque drawn in the name of the respective workmen namely Bharatiben B. Shah, Niruben M.Shrimali and Kokilaben G. Patel and to hand over such claques to their learned advocate Mr. Chauhan. Petitioner is further directed to pay retrenchment compensation payable to the aforesaid three workmen in accordance with law within two months from the date of receipt of copy of this order. As regards the workman Laxmiben M. Parmar, in view of the statement made by Mr. Chauhan has submitted that she is insisting for reinstatement and she may be given reinstatement with 50 % back wages and continuity of service, considering the fact that the petitioner is a public body, therefore, the respondent workman concerned namely Laxmiben Parmar is entitled to 50 per cent of the back wages only and the petitioner is directed to reinstate the said workman Laxmiben Parmar within two months from the date of receipt of copy of this order. In respect of workman Laxmiben Parmar also, Registry is directed to make payment of 50 per cent of the back wages to her by account payee cheque drawn in her favour and to hand it over to her learned advocate Mr. Chauhan. It is clarified that the said award is fully satisfied in respect of the aforesaid three workmen excepting Laxmiben Parmar and said three workmen are now not entitled to claim any amount against the petitioner in respect of the award in question. The award made by the labour court

shall stand modified in aforesaid terms. Rule is made absolute in terms indicated hereinabove with no order as to costs.

4.4.2002. (H.K. Rathod,J.)

Vyas